

# UNITED STATES FEDERAL COMMUNICATIONS COMMISSION

In The Matter Of:

KEVIN DAVID MITNICK,

EB Docket No.: 01-344

Licensee of Station NGNHB  
in the Amateur Radio Service  
for Renewal of Station  
License.

KEVIN DAVID MITNICK,

For Renewal of Amateur  
Radio General Class Operator  
License.

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## HERITAGE REPORTING CORPORATION

*Official Reporters*

1220 L Street, N.W., Suite 600

Washington, D.C. 20005-4018

(202) 628-4888

[hrc@concentric.net](mailto:hrc@concentric.net)

# ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In The Matter Of: )  
 )  
KEVIN DAVID MITNICK, ) EB Docket No.: 01-344  
 )  
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KEVIN DAVID MITNICK, )  
 )  
For Renewal of Amateur )  
Radio General Class Operator )  
License. )

Suite 600  
Heritage Reporting Corporation  
1220 L Street, N.W.  
Washington, D.C. 20005

Monday,  
June 24, 2002

The parties met telephonically, pursuant to the  
notice of the Judge, at 2:00 p.m.

BEFORE: HONORABLE RICHARD L. SIPPEL  
Administrative Law Judge

APPEARANCES:

On Behalf of Kevin David Mitnick:

LAUREN A. COLBY, Esquire  
10 East Fourth Street  
P.O. Box 113  
Frederick, MD 21701  
(301) 663-1086

Heritage Reporting Corporation  
(202) 628-4888

APPEARANCES: (Continued)

On Behalf of the Federal Communications  
Commission, Enforcement Bureau:

DANA LEAVITT, Esquire  
Federal Communications Commission  
Enforcement Bureau  
445 12th Street, S.W.  
Washington, D.C. 20554  
(202) 418-7584

I N D E X

| <u>WITNESSES:</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> | <u>VOIR DIRE</u> |
|-------------------|---------------|--------------|-----------------|----------------|------------------|
| David G. Hall     | 122           | 125          | 136             | 137            | --               |
|                   |               |              | 137             |                |                  |

E X H I B I T S

|                 | <u>IDENTIFIED</u> | <u>RECEIVED</u> | <u>REJECTED</u> |
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| <u>Mitnick:</u> |                   |                 |                 |
| 3               | 124               | 124             | --              |

P R O C E E D I N G S

(2:00 p.m.)

1 JUDGE SIPPEL: Good afternoon, Judge Sippel here.  
2 Is everybody on board?

3 MS. LEAVITT: Yes, Your Honor. It's Dana Leavitt.

4 JUDGE SIPPEL: Mr. Colby?

5 MR. COLBY: Lauren Colby here.

6 THE COURT REPORTER: This is the court reporter,  
7 Ms. Logan.

8 JUDGE SIPPEL: Okay, thank you, Ms. Logan.

9 And Mr. Hall, is Mr. Hall with us?

10 MR. HALL: Yes, sir. Yes, Your Honor.

11 JUDGE SIPPEL: I understand that there is no  
12 notary with you, but that you are prepared to review the  
13 transcript and then notarize your signature to the  
14 transcript. Is my understanding correct?

15 MR. HALL: Yes, that's right.

16 JUDGE SIPPEL: Okay, And, Ms. Leavitt, you are  
17 ready to proceed under those conditions?

18 MR. COLBY: Yes, Your Honor.

19 THE COURT REPORTER: If I could just ask on  
20 question, if people could introduce themselves before they  
21 begin to speak.

22 JUDGE SIPPEL: Excellent, excellent. You are  
23 right on. This is Judge Sippel speaking.

1           What I am going to do, Mr. Hall, right now is  
2 administer the oath to you.

3           MR. HALL: Okay.

4           Whereupon,

5                           DAVID G. HALL

6           having been duly sworn, was called as a witness  
7 and was examined and testified as follows:

8           JUDGE SIPPEL: Now, again this is Judge Sippel  
9 speaking.

10           Mr. Colby, you may proceed in presenting this  
11 evidence.

12           MR. COLBY: I am Lauren Colby speaking.

13                           DIRECT EXAMINATION

14           BY MR. COLBY:

15           Q     Dave, do you have before you a letter that you  
16 wrote to me on May 7, 2002?

17           A     Actually, I don't, but it's on it's way. It was  
18 faxed to the hotel, and there was a problem with it, but  
19 they are bringing it up to my room right now.

20           Q     Well, I'll just read the letter because it's very  
21 brief, and then ask you after I have read the letter whether  
22 it is your testimony.

23           A     Okay.

24           Q     It says, "During the time I worked with Kevin  
25 Mitnick at KFI, I saw him working tirelessly to both move on

1 with his life and to use his past to the benefit of others.  
2 His show on KFI was all about demystifying the internet for  
3 people. He focused on issues of security and explaining how  
4 the internet works, and how it can both help and hurt  
5 someone.

6 "He rarely spoke of hacking, and when he did, it  
7 was always in terms of explaining how someone's personal  
8 computer is vulnerable and what they could and should do to  
9 protect their computer and themselves.

10 "Kevin seemed genuinely interested in fostering  
11 understanding in others. It was this mindset that made the  
12 KFI show so successful and in fact attracted us to Kevin in  
13 the first place.

14 "If there is anything else I can do, please don't  
15 hesitate to ask."

16 Was that the text of your letter?

17 A Yes.

18 Q And do you swear and affirm that it's true and  
19 correct?

20 A Yes.

21 MR. COLBY: I have no further questions for you,  
22 but I believe Dana Leavitt from the Enforcement Bureau does,  
23 and I turn you over to her for cross-examination.

24 JUDGE SIPPEL: This is Judge Sippel again.

25 I would like to have this document, it has been

1 marked as Mitnick Exhibit 3 for identification, and I think  
2 would be appropriate to move it into evidence.

3 MR. COLBY: Lauren Colby speaking.

4 I move it at this time, Your Honor.

5 JUDGE SIPPEL: Any objection?

6 MS. LEAVITT: No, Your Honor. Dana Leavitt.

7 JUDGE SIPPEL: Judge Sippel.

8 Okay, then Exhibit 3 for identification is now in  
9 evidence as Mitnick No. 3.

10 (The document referred to was  
11 marked for identification as  
12 Mitnick Exhibit No. 3, and  
13 received in evidence.)

14 JUDGE SIPPEL: Let me add to that or make a query  
15 of the court reporter, do you have these exhibits before  
16 you?

17 THE COURT REPORTER: Yes, I do.

18 JUDGE SIPPEL: Would you please then make the  
19 appropriate entry that that document is received in  
20 evidence? Can you do that?

21 THE COURT REPORTER: Yes. I have.

22 JUDGE SIPPEL: Thank you very much.

23 Ms. Leavitt, you may proceed.

24 MS. LEAVITT: Thank you, Your Honor.

25 //



## CROSS-EXAMINATION

BY MS. LEAVITT:

Q Mr. Hall, how did you come about preparing this letter?

A I was asked by Mr. Colby.

Q Okay. Did anybody help you compose the letter?

A No.

Q Can you tell us where you work?

A I work at Premier Radio Networks in Sherman Oaks, California.

Q And what is your job title?

A I am senior vice president of programming.

Q How long have you been there?

A Six months.

Q And where were you prior to that time?

A At KFI Radio in Los Angeles.

Q And how long were you there?

A Fourteen years.

Q And please describe your duties.

A I was the vice president of programming at KFI. I was in charge of essentially everything that was on the air on the radio station. It's a talk radio, it's a news and talk radio station. So I hired and fired newspeople and talk show hosts, and then developed, you know, their shows so that they would be successful from a ratings and business

1     standpoint.

2           Q     Okay. . And what do you do now in your current  
3     functions?

4           A     The same thing, but for a national network, which  
5     just for reference is the network that syndicates Rush  
6     Limbaugh and Dr. Laura and some of the bigger talk shows in  
7     America.

8           Q     Okay. Did there come a time when you met Kevin  
9     David Mitnick?

10          A     There did.

11          Q     And please tell us about that.

12          A     We had an opportunity to have him on a guest in  
13     the morning show on KFI, and I actually heard him while  
14     driving to work the day that he was on. I thought he was  
15     excellent. I thought he was very informative, and likeable,  
16     approachable. And so when I got to the radio station that  
17     morning I pulled him aside and I talked to him about the  
18     possibility of maybe trying a talk show, trying to do a talk  
19     show for himself.

20          Q     And did there come a time when you hired Mr.  
21     Mitnick --

22          A     There did.

23          Q     -- a radio program?

24          A     There did.

25          Q     When was that?

1           A     Actually, I do not have the dates. I had, and  
2     this is something I would like to clarify here for you  
3     especially, I think, Ms. Leavitt, I had requested the exact  
4     dates of his employment from the radio station, but because  
5     this is an FCC matter and I am no longer an employee there,  
6     they need to be -- they need to hear from you to release the  
7     dates of when he was there.

8           Q     Oh, okay.

9           JUDGE SIPPEL: This is Judge Sippel.

10          Can you approximate the dates to the best of your  
11     recollection, please?

12          THE WITNESS: 2000, like the spring or summer of  
13     2000, I think.

14          JUDGE SIPPEL: You may proceed, Ms. Leavitt.

15          MS. LEAVITT: Thank you, Your Honor.

16          BY MS. LEAVITT:

17          Q     What was the name of the program?

18          A     The Dark Side of the Internet with Kevin Mitnick.

19          Q     And what was that show about?

20          A     It was about the internet, and really we tried to,  
21     or my goal for the show was to focus on two areas in the  
22     internet, or internet issues: security and content, because  
23     I thought that Kevin would probably be a little light on  
24     content since he's not allowed to access the internet, but  
25     would be pretty good with security and kind of demystifying

1     that for people, so that ended up being really the main  
2     focus of the show.

3             BY MS. LEAVITT:

4             Q     Is the show still airing?

5             A     It's not.

6             Q     Why is that?

7             A     We had to make budget cuts at the radio station,  
8     and we eliminated several of our weekend shows. It was a  
9     weekend show, by the way, that was on Sunday mornings from  
10    five to seven a.m. And so we eliminated it in the fall of  
11    2001.

12            Q     And why did you eliminate it?

13            A     Budget constraints. We just -- we couldn't afford  
14    the show, and several others on the weekend.

15            Q     Okay. So it ended in the fall of 2001?

16            A     Mm-hmm.

17            Q     Okay. So how long did the program run for then?

18            A     There were really two incarnations of it. The  
19    first, it went on the air in -- it must have been either  
20    late 2000 or early 2001, and again I'm sorry that I don't  
21    have specific dates. And the original intent was for it to  
22    have been a nationally syndicated network show actually with  
23    Premier, the company that I am working for now.

24                   And then after a few months it became clear that  
25    it probably wouldn't -- we probably wouldn't find a big

1 enough market for it as a nationally syndicated show. So we  
2 converted it to being a local show, just KFI only, and that  
3 was probably, oh, in the spring of 2001 when that happened.

4 So all together, about a year.

5 Q Okay. Did you make any tapes of the show?

6 A The show -- well, there are two answers to that.  
7 First, the radio station records everything that's on its  
8 air for FCC compliance purposes, and for -- you know, for  
9 legal purposes anyway.

10 Aside from that we were required to make tapes of  
11 the show to supply to Kevin's probation officer, which I  
12 personally did not do, but I oversaw that process.

13 Q And was there any feedback at all from his parole  
14 officer regarding the tapes?

15 A I never heard directly from his parole officer. I  
16 heard indirectly from not Kevin, but the producer of the  
17 show, who is the person who made the tapes and sent them to  
18 the parole officer, that the parole officer actually liked  
19 the show personally, you know, enjoyed listening to the show  
20 from a personal standpoint.

21 MR. COLBY: Lauren Colby here.

22 I would just interject to point out that there is  
23 no federal parole anymore. This is a probation officer.

24 THE WITNESS: Oh, I am sorry.

25 //

1 BY MS. LEAVITT:

2 Q And how did you interact with Kevin during the  
3 course of the running of his radio program?

4 A We would meet irregularly but frequently.  
5 Sometimes once or twice a week, sometimes once or twice a  
6 month, most due to my schedule because I had a lot going on.  
7 I was very busy at the time. And we would typically meet  
8 for about an hour. We would meet in my office during the  
9 week. Often I would play excerpts of the show and talk to  
10 him about things that he might consider doing differently,  
11 you know, to focus differently, or to bring different  
12 elements to the show.

13 And then we would always have a general discussion  
14 about the general direction of the show; you know, how  
15 informative it was, and how entertaining, and what could be  
16 done generally to get more attention for it and to have it  
17 become more successful.

18 Q And how did he reaction to your coaching?

19 A Very positively. He was like a sponge. He would,  
20 you know, take notes, listen very carefully. He was very  
21 quick to ask if he didn't understand something. And then he  
22 would really work to apply it, you know, the next time that  
23 he would be on the radio.

24 Q Would you consider yourself having been an  
25 authority figure with respect to Kevin?

1           A     Yes.

2           Q     Okay. How did he take it when you had to inform  
3 him that you weren't going to carry the show anymore, his  
4 program anymore?

5           A     He was disappointed. I think he really enjoyed  
6 doing the show. He was very disappointed.

7           Q     And how did you know that he was disappointed?

8           A     He told me.

9           Q     Okay.

10          A     Well, he sounded disappointed and he told me.

11          Q     Any other response? Did he have any other  
12 response to the cancellation?

13          A     No. He asked if I could help him, you know, find  
14 a different home for it or something. But other than that,  
15 no.

16          Q     Okay. Have you had any contact with Kevin  
17 subsequent to cancellation of the program?

18          A     Very infrequently. He called to tell me that this  
19 process was coming and to ask if I could be involved, and  
20 really that's about it. And the truth is he has actually  
21 called me several times, and I just have not had a chance to  
22 call him back, probably in regard to this process, but  
23 actually I don't know.

24          Q     Was there any conversation or contact regarding a  
25 syndicated program?

1           A     Yeah, actually there was. You know, when the show  
2     was finished and he had asked about getting my help, you  
3     know, some help for finding a home for the program, he was  
4     interested again in doing some kind of syndication or doing  
5     it differently.

6                     I had talked to him about coming into Premier to  
7     us the studio to make a demo because he had talked about  
8     doing a show that was different than what he had done on  
9     KFI. We never actually ended up doing that though.

10          Q     When were those contacts or discussions?

11          A     Oh, must have been January of this year, 2002.

12          Q     Do you have any ongoing dialogue regarding that?

13          A     No.

14          Q     Okay.

15          A     Although the matter was not closed. We just -- we  
16     don't have ongoing dialogue, but there was never a time  
17     where I told him that wasn't a possibility or that I  
18     wouldn't help. It's just nothing has happened with it.

19          Q     Okay. Do you have any concerns with Kevin's  
20     ability to deal with the Federal Communications Commission  
21     in an honest and forthright manner?

22          A     None.

23          Q     And why is that?

24          A     I have never seen him do anything at all in any  
25     way that would lead me to be suspect of him in that way.



1 Q Do you have any examples?

2 A Yeah. I have actually a personal example. When I  
3 first started working with Kevin, and you know, he explained  
4 what he could do and what he couldn't do, and what he could  
5 touch and what he couldn't touch, I was -- frankly, I was  
6 amazed, and quite frankly, teased him about that a little  
7 bit early on.

8 Q Let me interrupt one second, Mr. Wall.

9 You said that he told you what he could or  
10 couldn't do. What was that in reference to?

11 A The use of computers.

12 Q As it related to his conditions of his --

13 A Probation.

14 Q Okay.

15 A Yeah.

16 Q Okay.

17 A So for example, the discussion was something like,  
18 you know, he was very clear that he couldn't -- he couldn't  
19 use a computer. He would always have to sit next to someone  
20 or be on the phone with someone who is using a computer, but  
21 he couldn't touch it himself.

22 And so I asked him, you know, about different  
23 computer-related products. Can you use a calculator? Can  
24 you use a computer printer? Could you use one of those Palm  
25 Pilots, you know, that kind of thing. So we had that kind

1 of discussion.

2 After that discussion, frankly, I teased him a  
3 little bit about it, and which was probably not a very nice  
4 thing to do, but, you know, he was at my desk. I was  
5 looking at something on the internet. He was looking over  
6 my shoulder. And I said, "Are you sure you can't just, you  
7 know, touch a keyboard?"

8 And he said, "Oh," and he backed off entirely.  
9 Backed way up, and said, "No, absolutely not. I don't want  
10 to go there. I don't want to fuck up again."

11 And the whole time I worked with him, I saw that  
12 attitude and that manner from him; not that he was presented  
13 with temptation like that, but just, you know, every time  
14 that there could have been some place for him to say, well,  
15 maybe once, or, well, I trust you guys or whatever, he never  
16 did it.

17 In fact, when he was on the radio doing the show,  
18 there were two computers in that room, in the studio. And  
19 when the producer would leave the room during a break to go  
20 to the bathroom, he would leave the room and stand in the  
21 hallway. So he would never even allow himself to be alone  
22 in a room with a computer at the radio station, which I was  
23 pretty impressed by.

24 Q Why do you think he didn't want to be alone in a  
25 room with a computer?

1           A     I don't think he would want to have anyone be able  
2     to say that he did -- you know, that he violated the terms  
3     of his probation.

4           Q     And to what do you attribute his, I guess, change  
5     of heart in terms of his prior criminal activities and his  
6     current behavior?

7           A     I have the feeling that he wants to -- he really  
8     want to just fly straight, like he's -- he feels like has  
9     paid his debt. You know, he has done what he can. He  
10    has -- he just seems to be looking at life differently than  
11    he once did.

12                   And you have to remember I didn't know him back  
13    then, so it's kind of a lopsided reference, but I mean, he  
14    just -- you know, every conversation or meeting, it just  
15    seemed like he's so focused on doing the right thing and  
16    really straightening out his life and going forward and  
17    doing whatever is necessary to make that happen.

18           Q     So you have confidence -- how confident are you  
19    that he has changed his behavior permanently?

20           A     Based on my experience with him, 100 percent.

21           Q     Okay. And you mentioned earlier that, you know,  
22    you were at KFI for 14 years.

23                   How long have you been in the radio business?

24           A     Twenty-five years.

25           Q     Okay. So you're familiar with the FCC rules and

1 regulations?

2 A Very.

3 Q Okay. Do you happen to have a ham license  
4 yourself?

5 A No.

6 Q Okay.

7 A I have a second class radio telephone license  
8 which doesn't even exist anymore.

9 Q Have you, in your capacity, in your programming  
10 background, have you ever been cited for a violation?

11 A Never.

12 MS. LEAVITT: Okay, I have no other questions at  
13 this time.

14 JUDGE SIPPEL: Thank you, Ms. Leavitt. This is  
15 Judge Sippel.

16 Mr. Colby?

17 MR. COLBY: I have one question just for the  
18 record.

19 REDIRECT EXAMINATION

20 BY MR. COLBY:

21 Q What is your date and place of birth?

22 A October 6, 1964, Sacramento, California.

23 MR. COLBY: Thank you very much.

24 JUDGE SIPPEL: Judge Sippel. I have one question.  
25 I hope I am not asking you to repeat yourself.

1           What is your current business at this time?

2           THE WITNESS: I am in charge of syndicated radio  
3 talk shows that are broadcast nationally, distributed  
4 nationally for Premier Radio Networks.

5           JUDGE SIPPEL: That's all I have.

6           MS. LEAVITT: Your Honor, I just thought of  
7 another question. It's Dana Leavitt.

8                       RE CROSS-EXAMINATION

9           BY MS. LEAVITT:

10          Q    Are you related by blood or marriage to Kevin  
11 David Mitnick?

12          A    Not at all.

13          MS. LEAVITT: Okay, that's it, Your Honor.

14          JUDGE SIPPEL: Very well. Mr. Colby?

15          MR. COLBY: I would just like to clarify one  
16 thing.

17                       FURTHER REDIRECT EXAMINATION

18          BY MR. COLBY:

19          Q    Premier Radio Networks is a wholly owned  
20 subsidiary of Clear Channel, is it not?

21          A    It is. Yeah, it's the same company, different  
22 division. So this move for me from the radio station to  
23 Premier was a promotion and a lateral move within the same  
24 company; lateral from division to division in other words.

25          MR. COLBY: That clarifies what I wanted to bring

1 out. Thank you so much.

2 JUDGE SIPPEL: This is Judge Sippel.

3 I have nothing further.

4 MS. LEAVITT: Neither do I, Your Honor.

5 JUDGE SIPPEL: Is everybody complete?

6 MR. COLBY: Certainly I am.

7 MS. LEAVITT: I think so.

8 JUDGE SIPPEL: Okay, Mr. Hall, you have given very  
9 articulate testimony. Thank you very much, sir.

10 THE WITNESS: Thank you very much.

11 JUDGE SIPPEL: Okay, I'm not going to proceed any  
12 further with administrative matters. We can take those up  
13 later.

14 This session, this testimony session is completed.  
15 You will, of course, Mr. Hall, or Mr. Colby will obtain it  
16 for you a copy of the transcript that you can read and you  
17 are satisfied with it, you will sign it before a notary, and  
18 that will be it.

19 THE WITNESS: Okay.

20 JUDGE SIPPEL: Anybody have anything further?

21 MS. LEAVITT: Nothing, Your Honor.

22 JUDGE SIPPEL: Mr. Colby?

23 MR. COLBY: Nothing, Your Honor.

24 JUDGE SIPPEL: Thank you very much. Thank you,  
25 Madam Reporter.

1 THE COURT REPORTER: Oh, you are welcome.  
2 JUDGE SIPPEL: This session is terminated. Thank  
3 you again.

4 MR. COLBY: Bye-bye.

5 MS. LEAVITT: Bye.

6 MR. COLBY: So long, folks.

7 (Whereupon, at 2:20 p.m., the hearing in the  
8 above-entitled matter was adjourned.)


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**REPORTER'S CERTIFICATE**

FCC DOCKET NO.: 01-344  
CASE TITLE: Kevin David Mitnick  
HEARING DATE: June 24, 2002  
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.


Date: 6/24/02

  
Official Reporter  
Heritage Reporting Corporation  
1220 L Street, N.W., Suite 600  
Washington, D.C. 20005-4018

**TRANSCRIBER'S CERTIFICATE**

I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.


Date: 6/24/02

  
Official Transcriber  
Heritage Reporting Corporation

**PROOFREADER'S CERTIFICATE**

I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

Date: 6/24/02

  
Official Proofreader  
Heritage Reporting Corporation